

technological arts, where the cited prior art application was substantially different than that presently claimed, is that the disclosed combination would only be conceived easily in hindsight

More pertinently, the petitioner wishes to strongly assert that while it may be obvious that anything that alters REM sleep may influence dreaming, there is nothing in the Examiner's cited references that suggest altering or enhancing REM would specifically enhance or alter dream *lucidity*. Lucidity is known to be a very special, rare case of REM dreaming activity. There is currently no known physiological indicator that can distinguish lucidity from non-lucidity in REM sleep. It is theoretically just as likely that lucidity is an edge phenomenon spawned by the cyclic point between REM and non-REM sleep, and that enhancing the duration of REM might actually inhibit lucidity or its frequency in dreams.

It is also certainly likely true that thousands of other compounds may interact with the brains cholinergic systems and act in ways similar to Acetylcholine esterase, but not in any way enhance lucidity frequency or intensity. It was necessary for the applicant to specifically performed the clinical research in order to determine a (non-obvious) causal relationship, rather than a (theoretically obvious) correlative relationship. In the field of science, almost nothing is assumed or obvious until it is demonstrated or proven by reproducible research, since throughout history far too many 'obvious' correlative connections proved false or non-causative upon further examination.

Thus, until the present inventor did the original research to demonstrate the causal relationship between acetylcholine esterase and REM sleep, no such connection was ever suggested by any patent art, nor published by any other sources. Subsequently, however, the inventor's acetylcholin esterase and lucidity research has been cited by many sources, including books dedicated solely to the topic of dream influencing

substances, such as: "Drugs of the Dreaming, Oneirogens: Salvia Divinorum and other Dream-Enhancing Plants", by Gianluca Toro and Benjamin Thomas, 2007, Park Street Press. No other research or prior art linking lucidity to cholinergic influencing drugs is cited in this, or any other references. And in fact, if it were obvious Raynie et al. would have included some mention of lucidity in conjunction with Acetylcholine and REM, but absolutely none is implied or stated. In addition, many other publications have cited Dr. LaBerge's patent application, further providing evidence of nonobviousness through professional recognition.

As pointed out in Re: Frank N. Piasecki and Donald N. Meyers, United States Court of Appeals, Federal Circuit., 745 F.2d 1468, Oct. 17, 1984:

"Evidence of secondary considerations may often be the most probative and cogent evidence in the record. It may often establish that an invention appearing to have been obvious in light of the prior art was not. It is to be considered as part of all the evidence, not just when the decision maker remains in doubt after reviewing the art."

The applicant thus respectfully asserts that the combined references cited by the Examiner fail to overtly teach any connection between dream lucidity and cholinergic altering drugs. It has never been shown that the prior art references establish some tenable rationale as to why one of ordinary skill in the art would combine or modify the references in the manner asserted, as is required by MPEP 2143.

MPEP 2143 further suggest that it is critical for the Examiner to show that the proposed combination or modification would have predictable results. In particularly, in the highly unpredictable arts of biology, chemistry, and psychology, there is no indication that substances that influence human cholinergic systems

would obviously impact dream lucidity. Thus applicant respectfully submits that the Examiner has not met his burden to establish that a prima facie (at first sight) case for unobviousness exists in this case.

Additionally, the lack of implementation prior to the invention's publication mitigates any suggestion of unobviousness. If the invention were in fact obvious, because of its advantages, those skilled in the art surely would surely have implemented it before it became publically known as a pending patent. The fact that those skilled in the art did not previously suggest, describe, or implemented the invention mitigates strongly against nonobviousness. In fact, applicant believes all examples of prior patent art methods of enhancing lucidity are strictly limited to devices.

Furthermore, the invention has received competitive recognition. After the present patent application was published, it was introduced to the marketplace by multiple (infringing) third parties. Thusly reified, it in this sense has achieved a level of commercial success. Specifically, the present invention has been apparently been copied with the marketing claims of two business entities, ADVANCED DREAM NUTRITION, & BRILLIANT BRANDS LLC. Excerpted below are direct quotes from one manufacturer, Brilliant Brands. The infringing claims, excerpted from: brilliantdreams.com/about/about-dreams.htm, March, 2006:

Brilliant Brands LLC is a USA based company. ... Our Brilliant Dreams Dream Enhancement Supplement™ is a patent pending, scientific formulation featuring galanthamine, an acetylcholinesterase inhibitor (AChEI) that stimulates vivid dreams and promotes and supports memory function. The Brilliant Dreams formulation also contains the nutrients choline and vitamin B5 and the hormone melatonin which naturally occurs in the body. This blend has been specially

formulated to promote dream recall, enhance dream vividness, encourage lucid dreaming and increase dream density.

(Please see Exhibit 1: Declaration of Infringement under rule 132.)

Applicant believes the claims, as amended, are patentable over the prior art, and that this case is now in condition for allowance of all claims therein. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, she is invited to telephone or email the undersigned via the information given below.

Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file.

Respectfully Submitted;

Applicant, Stephen LaBerge, c/o



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